RE CHIN KWAN KEE EX P SHRIRO PAPER (M) SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
[BANKRUPTCY NO: D2-29-1957-1997]
29 JULY 1999

BANKRUPTCY: *Creditor's petition - Application to strike out - Whether petition failed to describe address of judgment debtor correctly - Bankruptcy Rules 1969, r. 100(2) - Filing of petition in a state other than the state in which judgment debtor resided - Whether petition invalidated - Bankruptcy Rules 1969, r. 101(2)*

This is an appeal against the decision of the Senior Assistant Registrar dismissing the judgment debtor's application for the striking out of the creditor's petition.

The judgment debtor's grounds for appeal were two fold. Firstly, contrary to r. 100(2) of the Bankruptcy Rules 1969 ('1969 Rules') the creditor's petition failed to describe the judgment debtor's address correctly as the judgment debtor was no longer carrying on business at the place where the debt was contracted. Secondly, contrary to r. 101(2) of the 1969 Rules the petition was filed in the Federal Territory of Kuala Lumpur and not in the State of Selangor where the judgment debtor had been residing for the greater part of the year.

Held:

[1] Rule 100(2) of the 1969 Rules was not applicable as the place of residence of the judgment debtor was the same at all material times. As far as place of business was concerned, he did not carry on business at an address other than his place of business at the contracting time.

[2] Rule 101(2) of the 1969 Rules did not apply as the filing of a petition in a state other than the state in which the judgment debtor resided did not invalidate the petition.

[Appeal dismissed with costs.]

Case(s) referred to:

Re Dato' Othman Bokhari, ex parte Diners Club (M) Sdn Bhd [1998] 4 CLJ Supp 315 ***(aff)***

Legislation referred to:

Bankruptcy Rules 1969, rr. 100(2), 101(2)

For the judgment creditor - Teh Cheng Aik; M/s Teh Cheng Aik & Co
For the judgment debtor - Amarjeet Singh; M/s Zubeda & Amarjeet

Reported by Sherin Kunhibava

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JUDGMENT

Abdul Aziz Mohamad J:

The learned Senior Assistant Registrar has dismissed the judgment debtor's application for the striking out of the creditors' petition in this case. The
b judgment debtor now appeals.

At the time that the judgment debtor contracted the debt in respect of which the petition was presented, he was carrying on a business in which he traded as Chinoon Enterprise at a place of business in Cheras, in the Federal Territory of Kuala Lumpur. According to him (para. 6 of his affidavit dated 6 January
c 1999 and para. 5 of his affidavit dated 16 January 1999) since May 1997 he no longer carried on business at the Cheras address but he had forgotten to effect a change in the Register of Businesses concerning "pindahan alamat perniagaan" because he was no longer giving attention to the business, which was no longer active. He did not say whether, or where, he was carrying on
d any other business.

As regards his residence, the address has been at all material times an address in Ampang, in the State of Selangor.

The creditor's petition was filed on 23 March 1998 in the High Court at Kuala Lumpur. It described the judgment debtor as of the Cheras address.
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Those are the facts or averments that have a bearing on the sole ground, involving two points, relied upon by the judgment debtor in this appeal for contending that the creditors' petition ought to be set aside. The ground is non-compliance with r. 100(2) and r. 101(2) of the Bankruptcy Rules 1969. Rule 100(2) provides as follows:
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> (2) Where a petition is presented against a debtor who resides or carries on business at an address other than his residence or place of business at the time of contracting the debt or liability in respect of which the petition is presented, the petitioning creditor shall describe the debtor as of his present address and description, and as lately residing or carrying on
g business at the address when the debt or liability was incurred."

Rule 101(2) provides as follows:

> (2) Where the debtor has for the greater part of one year immediately preceding the presentation of the petition carried on business in one State and resided in another State the petition may be filed in the Court of the
h State in which he has carried on business.

As I understand learned counsel for the judgment debtor, the point about r. 100(2) is that, in view of those facts and averments, the petition should, as required by the rule, have described the judgment debtor – which it did not – as
i of his residential address in Ampang and as lately carrying on business at the address in Cheras, being the judgment debtor's place of business at the time of contracting the debt in respect of which the petition was presented.

The rule applies in the case of a petition that is presented against "a debtor who resides or carries on business at an address other than his residence or place of business at the (contracting) time". I take the liberty of modifying the quote for the sake of brevity and easy comprehension, "contracting" time being the time of contracting the debt or liability in respect of which the petition is presented. I think that in that quote "resides" must be paired with "residence" and "carries on business" must be paired with "place of business". It would not make sense to pair "resides" with "place of business" or to pair "carries on business" with "place of residence". On that basis, the quote is reducible to "a debtor who resides at an address other than his residence at the contracting time or a debtor who carries on business at an address other than his place of business at the contracting time". The question, then, is: was the judgment debtor here such a debtor when the petition was presented on 23 March 1998? The answer is no. As far as his residence concerned, it has been the same at all material times. As far as place of business is concerned, he was not a debtor who carried on business at an address other than his place of business at the contracting time, because he did not claim that he had been carrying on any business anywhere since May 1997. So r. 100(2) does not apply in the case of the judgment debtor here and no question of complying with it arises. The point about r. 100(2) fails on its construction and on the judgment debtor's own averments, and I need not consider the question whether the averments are true, or the question of the applicability of the rule where the creditor does not know of the change in the debtor's residence or place of business, or the proper consequence of non-compliance with the rule.

As regards r. 101(2), the submission of learned counsel for the judgment debtor was that since, for the greater part of one year immediately preceding the presentation of the petition, the judgment debtor was residing in the State of Selangor and was not carrying on business in the Federal Territory of Kuala Lumpur, the rule does not apply so as to enable the petition to be filed in Kuala Lumpur. The petition should, therefore, have been filed in the State of Selangor, where the judgment debtor had been residing. What the submission concerning r. 101(2) amounts to is that the petition was filed in a State other than the State in which the judgment debtor was resident.

To dispose of the point of r. 101(2), again I need not decide whether the judgment debtor had in fact ceased to carry on his business in Cheras since May 1997, because, even if the petition was filed in the wrong State, I am of opinion, as I was in *Re Dato Othman Bokhari ex parte Diners Club (M) Sdn Bhd* [1998] 4 CLJ Supp 315 and for the reasons that I gave in that case, that the filing of a petition in a State other than the State in which the judgment debtor is resident does not invalidate the petition.

I dismiss the appeal with costs.